STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
John H. Tippets, Director

February 3, 2020

Krista Klein
Bear Lake Sands, LLC
P.O. Box 2013
Laketown, UT 84038

RE: FINAL §401 Water Quality Certification for the East Shore Marina Maintenance Project, NWW-2019-00222

Dear Ms. Klein,

Enclosed is the final water quality certification for the above referenced Army Corps of Engineers project, which will be permitted under an individual permit. No comments were received during the 21-day period that the document was available on our website for public comment. Please make sure that your staff and contracted individuals read the document and are familiar with conditions of the certification (pages 4-8).

If you have questions or concerns, please contact Lynn Vanevery at (239) 236-5013 or via email at lynn.vanevery@deq.idaho.gov.

Sincerely,

Bruce Olenick
Regional Administrator
Pocatello Regional Office

Enclosure
c: Megan Biljan, Corps of Engineers – Boise Field Office

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

February 3, 2020

404 Permit Application Number: NWW-2019-00222, East Shore Marina Maintenance

Applicant: Krista Klein, Bear Lake Sands, LLC

Project Location: East shoreline of Bear Lake within Section 12, Township 16 South, Range 44 East, near Latitude 42.057674° N and Longitude -111.255463° W, in Bear Lake County, near St. Charles, Idaho.

Receiving Water Body: Bear Lake

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon our review of the joint application for permit, received on December 12, 2019, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Project Description

The East Shore Marina was originally constructed in 1977 and is in need of maintenance due to erosion and silt accumulation. The project proposes to repair two existing breakwater arms, dredge accumulated silts and sediments from the bottom of the marina to allow safe watercraft access to and from Bear Lake in low lake level conditions, and install new boat slips and utility lines within the existing marina footprint. Work as proposed includes dredging the bed of the marina footprint, including some distance lake ward of the marina inlet/outlet, and the replacement or reposition of existing rock riprap along the constructed breakwater arms to halt further erosion and sedimentation into the lake. Additional work includes the removal of an existing degraded 20-slip dock to facilitate the installation of up to six (6) docks with slips (168 boat capacity) and the installation of sewer, water and fuel utilities. The proposed action includes:

1. Retrieve or replace rock rip rap material on two breakwater arms that have dislodged into the lake. New material will consist of 6" to 48" angular rock. Total linear distance of the breakwater arms is 320 linear feet on the south arm and 240 linear feet on the north arm. Approximately 60% of the length of each arm is in need of some repair.

2. Dredge the bed of the marina, while dry, with an excavator to as low as 5,905 feet, as necessary, to ensure watercraft access in low lake level conditions. This number is based on a three foot minimum draft for water craft, and a three year trailing average of the lowest levels in Bear Lake over the past 100 years. The marina floor has accumulated approximately one foot of material since its original construction in 1977. Dredging will only be done where necessary, based on the lake level. Removed sediment will be dried and stored on private property adjacent to the marina, above the lake bed and ordinary high water mark and not in wetlands. Dredged material must be placed so it is isolated from the edge of the water body or area wetlands and controlled so that it will not re-enter the waters of the state.

3. Remove an existing 20-slip dock and install up to six new docks, providing a total of 168 slips, and installing piles into the lake bed for structural support of the docks. These docks will be installed in phases to match supply with demand.

4. Install sewer and water services as well as fuel pumps to service watercraft. All services will be installed above the ordinary high water mark of Bear Lake and no fuel pumps or storage tanks will be installed on docks or over water.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent

federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

Receiving Water Body Level of Protection

This project is located on Bear Lake within the Bear Lake Subbasin assessment unit (AU) ID16010201BR018_0L). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation and drinking water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100). This AU is included in Category 3 (Unassessed Waters) of the 2016 Integrated Report. Therefore, DEQ must provide an appropriate level of protection on a case-by-case basis using information available at this time (IDAPA 58.01.02.052.05.b). The project applicant is willing to assume the receiving water is high quality. As such, DEQ will provide Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I, for the designated beneficial uses of Bear Lake.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

High-Quality Waters (Tier II Protection)

Bear Lake is considered high quality for cold water aquatic life, salmonid spawning, and primary contact recreation. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to cold water aquatic life, salmonid spawning, and primary contact recreation uses of the Bear Lake (IDAPA 58.01.02.052.06). The pollutant of concern from this activity is sediment. In order to maintain the ambient water quality conditions, permanent erosion and sediment controls must be implemented which will minimize or prevent future sediment contributions from the project area. Any dredging will be done in the early spring when water levels in Bear Lake are the lowest to minimize turbidity. Equipment will be restricted from the lake bed wherever possible and dredging shall not be undertaken during the fish spawning season of October 1 - December 31. During the dredging of the marina, the opening of the marina will be temporarily dammed to prevent flow of higher nutrient material that has accumulated in the marina from flowing into the lake. Additionally, all earth moving equipment will be inspected regularly and maintained for oil or fuel leaks during project activity.

The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to Bear Lake will not occur. Therefore, DEQ concludes that this project complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary. In addition, should the applicant proceed with installing drinking water and sewer facilities associated with the marina, DEQ will require submittal of plans and specifications of those facilities, for our review and approval.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to

another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.

4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.

Fill Material

8. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
9. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
10. All temporary fills shall be removed in their entirety on or before construction completion.
11. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

Erosion and Sediment Control

12. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at http://www.deq.idaho.gov/media/494058-entire.pdf. Other resources may also be used for selecting appropriate BMPs.
13. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
14. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
15. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
16. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.

17. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
18. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
19. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
20. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
21. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
22. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
23. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
24. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

Turbidity

25. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately.*
26. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).
27. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize instream sediment suspension and resulting turbidity.
28. Turbidity monitoring must be conducted, recorded, and reported as described below. Monitoring must occur each day during project implementation when project activities may result in turbidity increases above background levels. Copies of daily logs recording visual turbidity observations must be available to DEQ upon request. The log must include pre-activity observations and activity compliance point observations. The report shall describe all turbidity plume observations, both spatial and temporal, and subsequent actions taken and the effectiveness of the action including subsequent monitoring.

Pollutants/Toxics

29. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the state.

Vegetation Protection and Restoration

30. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
31. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
32. Fencing and other barriers should be used to mark the construction areas.
33. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
34. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Dredging Activity Management

35. Prior to dredging within the existing marina footprint and/or lake-ward of the marina inlet/outlet, plans and specifications for that activity, including cofferdam installation and removal, method of dredging and equipment requirements, and method of transport and placement/disposal of overburden shall be submitted to DEQ for our review and approval. In addition, DEQ must also receive notification that appropriate authorizations and approvals for this activity have been received by the applicant from the Idaho Department of Lands.

Management of Hazardous or Deleterious Materials

36. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the State. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
37. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the lake if this fluid is available.
38. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
39. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
40. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a

water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.

41. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
42. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
    a. Make every reasonable effort to abate and stop a continuing spill.
    b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
    c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).
        - Pocatello Regional Office: 208-236-6160 / 888-655-6160
    d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

Treated Wood

43. DEQ's *Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments* must be considered when using treated wood materials in the aquatic environment. Within this guidance document DEQ references the *Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments*. This document provides recommended guidelines for the production and installation of treated wood products destined for use in sensitive environments.

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Lynn Van Every, Pocatello Regional Office, (208) 236-6160 or at Lynn.vanevery@deq.idaho.gov .

Bruce Olenick for
Regional Administrator
Pocatello Regional Office